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C O N F I D E N T I A L SECTION 01 OF 02 TIRANA 000474

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DEPARTMENT FOR EUR/SCE; G/TIP
DOJ FOR OPDAT AND ICITAP

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SUBJECT: SUPREME COURT SETS ANOTHER TRAFFICKER FREE

REF: A) TIRANA 56 B) 2008 TIRANA 292

Classified By: AMBASSADOR JOHN L. WITHERS II FOR REASONS 1.4 (b) AND (d)
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11. (C) Summary: On May 28, notorious human trafficker Genci Hysa, who was found guilty of human trafficking, had his conviction reversed and was freed from prison by the Supreme Court. The high court claimed that he could not be charged in Albania for crimes he was already acquitted of in Italy, i.e. "double jeopardy." Hysa gained notoriety in 2002 when the badly mutilated body of Servete Kulla, his "wife," was found dead in a trash bin in Genoa. Hysa admitted to forcing her to work as a prostitute but denied murdering her. The prosecutor in the case, as well as other Albanian legal experts, say there is no basis for the Supreme Court's decision under the law, particularly given European legal conventions to which Albania is a signatory, and the Albanian Criminal Procedure Code itself, which address precisely this situation. This is the third human trafficking case in which the Supreme Court has produced a questionable legal argument to overturn the decision of lower courts, resulting in the freedom of human traffickers. End summary.

12. (C) On May 28, the Supreme Court issued a decision releasing notorious alleged trafficker Genci Hysa from prison. Hysa was charged for forcing his "wife," Servete Kulla, to work as a prostitute in Italy where she was eventually found in a trash bin in Genoa after having been stabbed to death in April 2002. At that time the case received enormous coverage in the Italian and Albanian press. Hysa was tried in Italy and found not guilty in February 2005 for lack of evidence and witnesses. In May 2004, Hysa was charged in Albania for trafficking in women causing death of a victim. Albanian prosecutors obtained evidence from the Italian prosecution case, and also conducted additional investigations in Italy and in Albania. The trial court found Hysa guilty on trafficking charges and an appellate court upheld the conviction. Hysa was held for nearly two years until the Supreme Court overturned the conviction, and Hysa was immediately released from prison. Moreover, he is now entitled to compensation for unlawful detention for the time he spent in prison. The case can only be appealed to the Constitutional Court if the Prosecutor General chooses; a move which the prosecutor in the case seemed to think was unlikely.

13. (C) In a June 8 meeting with Poloff, the prosecutor was visibly upset at the Supreme Court's decision. According to the prosecutor, the Supreme Court's reasoning was "legally inappropriate." The Supreme Court ruled that Hysa's sentence should be vacated because of "double jeopardy," i.e. he was charged in Italy for murder and trafficking and found not guilty, so he cannot be charged for the same crimes in Albania. According to the prosecutor and other legal experts spoke with, this reasoning is not legally sound and directly contradicts the European Convention for Validity of Criminal

Trials, ratified by Albania in 2003, which explicitly states in Article 53 that countries are not obliged to recognize other countries' verdicts as part of double jeopardy conflicts. In addition, the Albanian criminal procedure code prohibits the recognition of foreign court decisions while a criminal proceeding is ongoing in Albania, or when an Albanian court has rendered a final decision against the same defendant for the same charges. Moreover, the Albanian case was broader and included evidence of trafficking recruitment in Albania and other evidence obtained in Albania and Italy that was not presented to the Italian court, according to the prosecutor and other legal experts.

¶4. (C) When asked for clarification on the Supreme Court decision, the prosecutor expressed exasperation as he described the work he had put into the case. He also complained that he had no explanation for Servete's parents when they asked why Hysa was set free. He did say however, that Hysa was very rich and has considerable business contacts and money. The prosecutor stated that he was worried about the possible precedent the "double jeopardy" ruling might set for other cases, not just human trafficking, but also narcotics trafficking and other crimes that occur across borders.

¶5. (C) Comment: This is the third trafficking case Post is aware of over the past 18 months (see refs a and b) in which the Supreme Court has ruled in favor of suspected traffickers on what appears to be shaky legal logic. The same judge has presided over each of these cases. Post does not construe the decisions of the Supreme Court to reflect indifference about trafficking from the GOA writ large. Rather, these

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decisions and other court rulings suggest a pattern of regressive decisions by the Supreme Court in which recent major corruption cases have been dismissed. According to one observer, some criminal defense lawyers are beginning to disregard how the lower courts rule, saying "we can fix things at the Supreme Court." It should be noted that Supreme Court justices enjoy lifetime immunity from prosecution. Post has discussed these trafficking cases with GOA officials that cover TIP and they have said they will look into them.

WITHERS